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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/749,145	12/27/2000	Tuan Pham	4458-00002	4764
7590 05/14/2004				
William L. Falk Andrus, Scales, Starke & Sawall, LLP Suite 1100 100 East Wisconsin Avenue Milwaukee, WI 53202-4178		EXAMINER MENDEZ, MANUEL A		
		ART UNIT 3763		
DATE MAILED: 05/14/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/749,145	PHAM, TUAN	
	<b>Examiner</b>	<b>Art Unit</b>	
	Manuel Mendez	3763	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

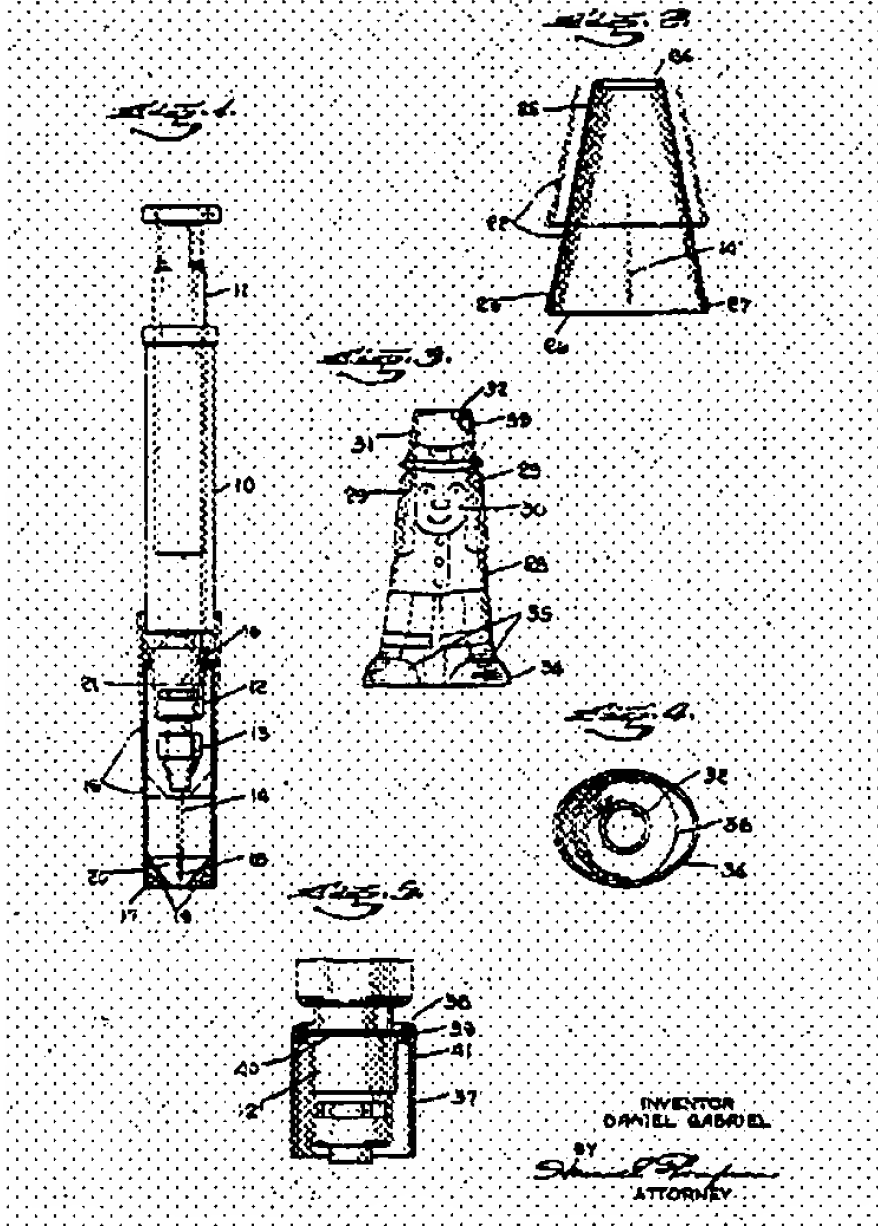
## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

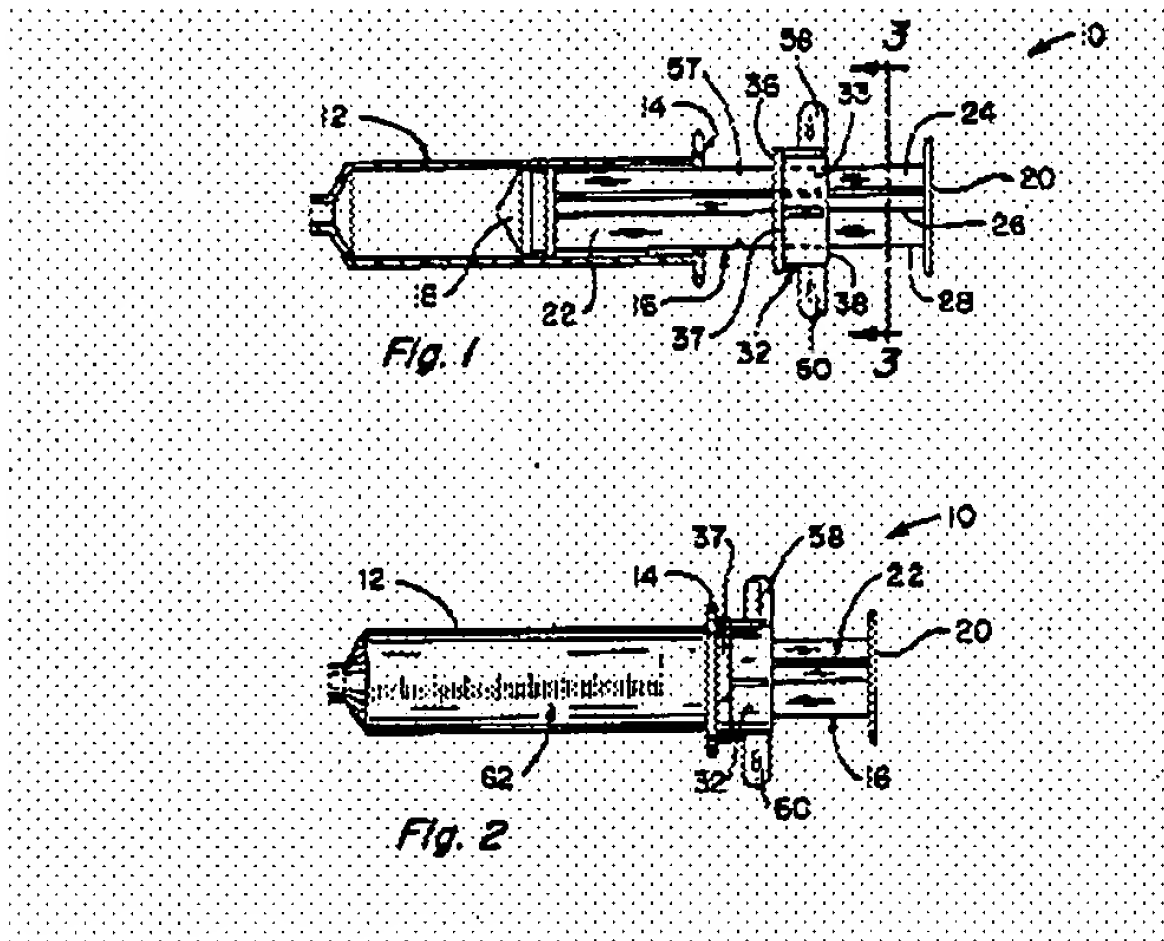
**Claims 1-3, 5-7, 11-13, 15 and 16** are rejected under 35 U.S.C. 103(a) as being unpatentable over Smeton in view of Gabriel and Avner. The Smeton Patent shows in figures 1-8, a syringe cartridge containing medicinal fluid, a needle coupled to the syringe cartridge to communicate fluidically with the syringe cartridge and a plunger. The Smeton Patent does not disclose a syringe holder wherein the needle is normally hidden in the holder, and furthermore, wherein the plunger and the holder cooperate together to define a toy. However, the above holder/plunger design is conventional in the art as evidenced by the teachings of Gabriel.



In figures 1 and 3, the Gabriel Patent shows a syringe holder wherein the needle is normally hidden in the holder, and furthermore, wherein the plunger and the holder cooperate together to define a toy. Please note that when the toy shown in figure 3 is connected to the syringe structure, the syringe plunger becomes the hat of the toy creating a deception for the syringe and the needle. Based on the teachings of Gabriel, it would not be unreasonable to suggest that for a person of ordinary skill in the art, modifying the structure disclosed by Smeton with the “deception design” of Gabriel would have been considered an obvious design alternative. Finally, the Avner Patent is included in this rejection to strongly demonstrate that the use of toys and decorative covers in combination with medical instruments in order to create deception is conventional in the art.

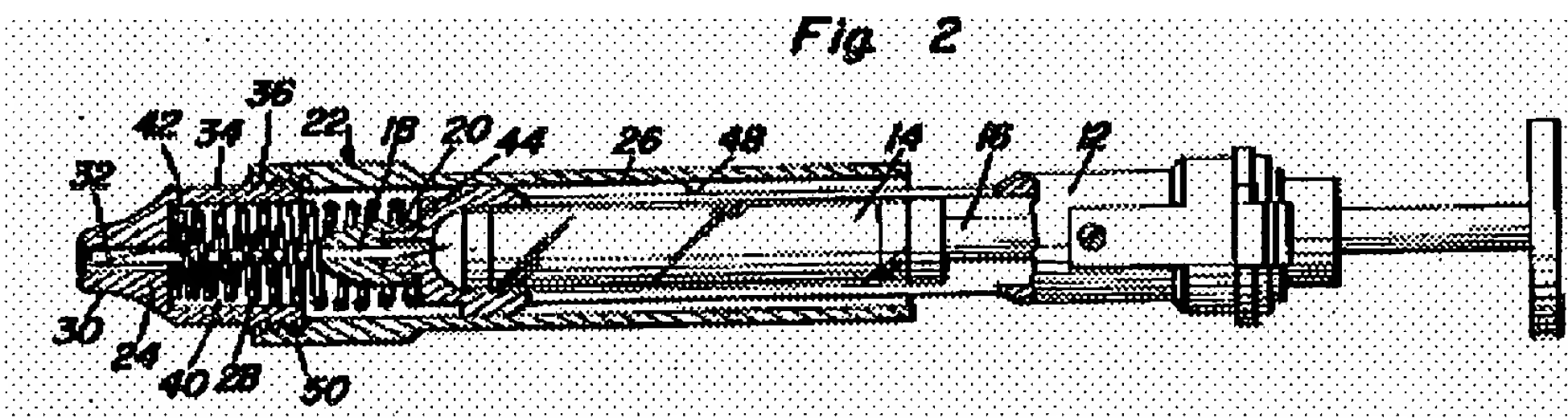
**Claims 4** is rejected under 35 U.S.C. 103(a) as being unpatentable over Smeton in view of Gabriel and Avner, and in further view of Moran, et al.

The Smeton and Gabriel Patents do not disclose the use of a plunger lock in their syringe designs. However, such use is conventional in the art as evidenced by the teachings of Moran, et al.



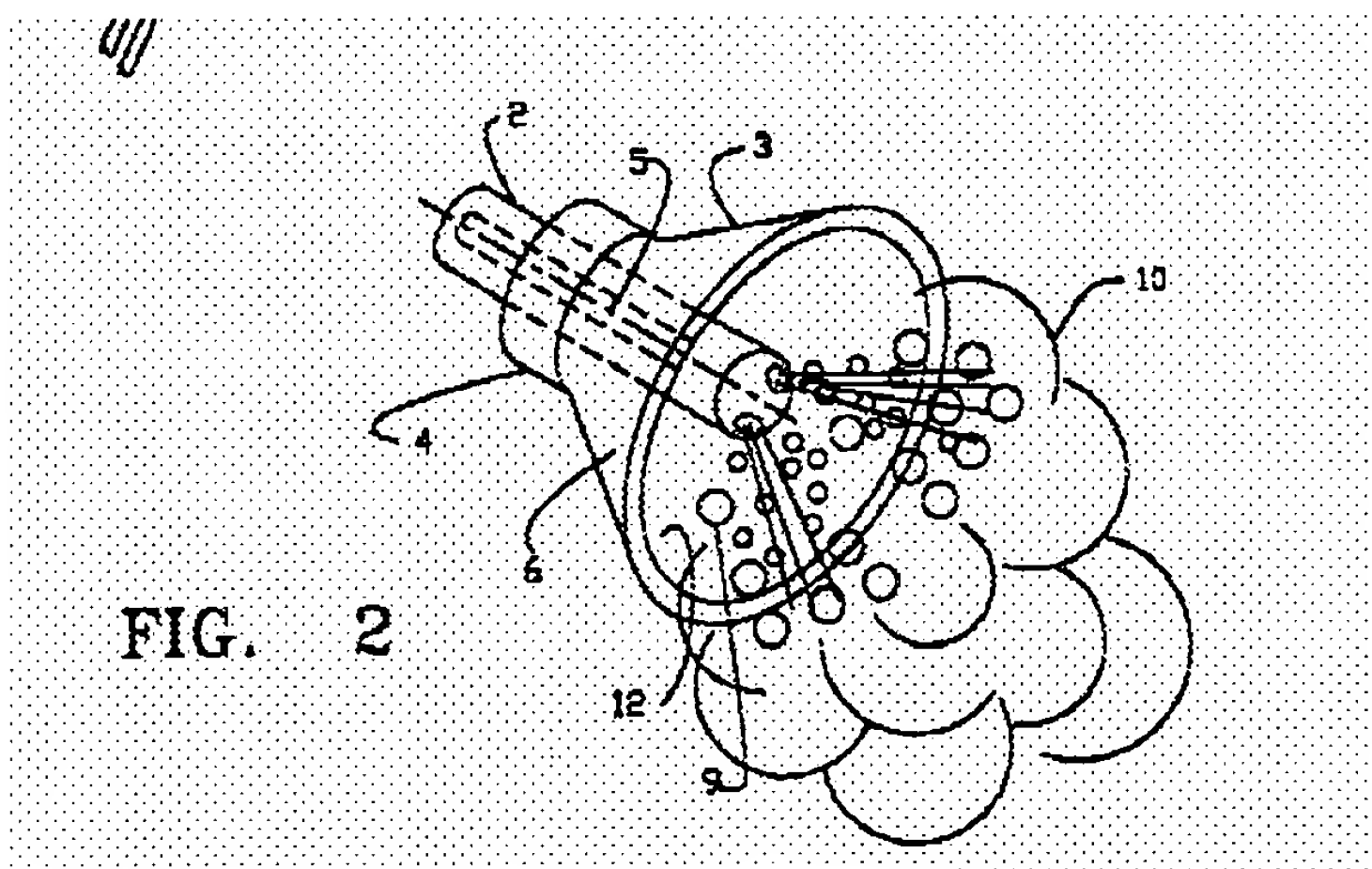
In figures 1 and 2, Moran, et al., shows a syringe plunger equipped by a plunger lock to prevent the movement of the plunger with respect to the syringe body. Accordingly, for a person of ordinary skill in the art, modifying the syringes used in Gabriel and/or Smelton with a syringe having a plunger lock would have been considered an obvious design choice.

**Claims 8 and 14 are** rejected under 35 U.S.C. 103(a) as being unpatentable over Smeton in view of Gabriel and Avner, and in further view of Saenz.



In figure 2, the Saenz Patent shows a retractable needle syringe using a cartridge system and having a spring positioned in the chamber. Again, following the reasoning of the rejection above, for a person of ordinary skill in art, modifying the syringes used in the Smeton or Gabriel Patents with a syringe design as shown in figure 2, would have been considered an obvious design alternative.

**Claims 9 and 10** are rejected under 35 U.S.C. 103(a) as being unpatentable over Smeton in view of Gabriel and Avner, and in further view of Wada, et al. and Lee. The Smeton, Gabriel, and Avner Patents do not disclose means for delivering a stream of pressurized fluid. However, the use of means for delivering pressurized fluid in syringes is conventional in the art as evidenced by the teachings of Wada, et al.



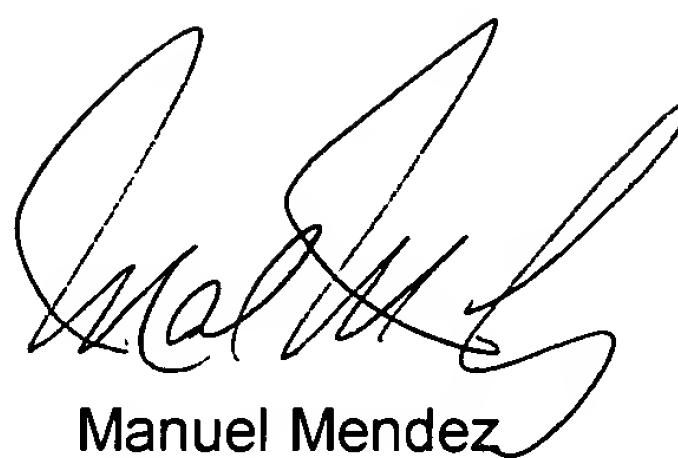
Wada, et al., shows in figure 2 means for delivering pressurized fluid in a dental syringe having a duct with one end adapted to be connected to a source of pressurized fluid and a second end forming a pair of outlets. Based on the above teachings, enhancing the syringe structures of Smeton or Gabriel with means for

delivering pressurized fluid would have been considered an obvious design choice. In relation to claim 10, the shape of the finger rest is not described in the claim. Accordingly, the examiner defines a finger rest as any surface in the syringe body where a finger can rest or any area in the syringe body where there is contact between the finger and the syringe surface. Based on this definition, the proximal end of the syringes disclosed in Smeton or Gabriel meet the definition criteria.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Manuel Mendez whose telephone number is 703-308-2221. The examiner can normally be reached on 0730-1800 hrs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Brian Casler can be reached on 703-308-3552. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Manuel Mendez', with a stylized, flowing script.

Manuel Mendez  
Primary Examiner  
Art Unit 3763

MM